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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,975	01/29/2004	James M. Mattern	770P011373-US (PAR)	4327
2512	7590	12/21/2005	EXAMINER	
PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824			JABR, FADEY S	
			ART UNIT	PAPER NUMBER
			3639	
DATE MAILED: 12/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/766,975

Applicant(s)

MATTERN, JAMES M.

Examiner

Fadey S. Jabr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/7/05, 6/20/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 4 is objected to because of the following informalities: Claim 4 recites the word “sets” which should be replaced with “set”. Appropriate correction is required.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

As per Claims 1-7, Claims 1-7 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 1-7 are written in “single means claim” format since they recite only one element to do all the functions recited. The claim is not written in “means-plus-function” language, however, in *Fiers v. Revel*, (CAFC) 25 USPQ2d 1601, 1606 (1/19/1993), the CAFC affirmed a rejection under 35 USC 112 of a claim reciting a single element that did not literally use “means-plus-function” language. Claims 1-7 are drawn to any “means for allocating”, regardless of construct, that performs the function recited. This parallels the fact situation in *Fiers* wherein “a DNA” and a result was recited. The CAFC stated in *Fiers* at 1606 “Claiming all DNA’s that achieve a result without defining what means will do so is not in

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compliance with the description requirement; it is an attempt to preempt the future before it has arrived”. See also *Ex parte Maizel*, (BdPatApp&Int) 27 USPQ2d 1662, 1665 and *Ex parte Kung*, (BdPatApp&Int) 17 USPQ2d 1545, 1547 (1/30/1989) where the claims at issue were rejected for being analogous to single means claims even though “means” was not literally used. Thus, claims 1-7 yield a “means for allocating” that achieves a result without defining what will do so.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per Claim 4, the claim is unclear because it depends from itself (i.e. the claim is circular). For the purpose of examination the examiner will assume claim 4 depends from claim 3.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

As per Claims 1-14, the limitations include recitations of “an indicia pool utilizing PSD’s...” and an “indicia manager that initiates queues...”. Examiner submits that when considering these limitations in the broadest reasonable interpretation, the

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limitations are interpreted as claiming a human being which is non-statutory. If the broadest reasonable interpretation of the claimed invention as a whole encompasses a human being, then a rejection under 35 U.S.C. 101 must be made indicating that the claimed invention is directed to nonstatutory subject matter. See MPEP 2105.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims **1, 3, 5, 6, 8, 12 and 13** are rejected under 35 U.S.C. 102(e) as being anticipated by Kresina et al., Pub. No. US2003/0074324 A1.

As per **Claim 1 and 8**, Kresina et al. discloses a system comprising:

- an indicia pool utilizing PSD's for generating indicia
(Para. 32, lines 10-14; Para. 33);
- a download pool for refreshing PSD funds (Para. 27); and
- a means for allocating the one or more PSD's among the indicia pool and download pool according to indicia generating requirements and funding amounts within the one or more PSD's (Para. 24, lines 1-4; Para. 33).

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As per **Claim 3**, Kresina et al. further discloses a system comprising a worker pool for initializing and holding PSD's for allocation (Para. 25)

As per **Claim 5 and 12**, Kresina et al. further discloses a system comprising a maintenance pool for performing diagnostics on a PSD that cannot perform one or more functions (Para. 25; Para. 26).

As per **Claim 6 and 13**, Kresina et al. further discloses a system wherein the diagnostics include corrective action for correcting a failure (Para. 25; Para. 26).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claim 4, 7 and 14** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kresina et al., Pub. No. US2003/0074324 A1.

As per **Claim 4**, Kresina et al. further discloses a system wherein the worker pool operates to set a port number for a particular PSD (Para. 24; Para. 144). Kresina et al. fails to disclose a system wherein a personal identification number for a particular PSD is set. However, Kresina et al. teaches a record containing a serial number for a PSD (Para. 144). Therefore, it would have been obvious to one of ordinary skill in the art at the time

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of applicant's invention to modify the system of Kresina et al. and include setting a personal identification number. Kresina et al. provides motivation to include a personal identification number in a PSD in order to keep a summary usage log (Para. 144).

As per **Claim 7 and 14**, Kresina et al. discloses a system that services postal security devices that have failed (Para. 25; Para. 26). Kresina et al. fails to disclose a system wherein the corrective action includes reloading an operating system and an application program of the PSD that cannot perform one or more functions. However, Kresina et al. teaches a system that services postal security devices by configuring them (Para. 25; Para. 26). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the system of Kresina et al. and include corrective action which includes reloading an operating system and an application program. Kresina et al. provides motivation to include configuring (reload an operating system and an application program) a PSD by revealing it would be done to reinstate the PSD into service for a customer (Para. 25).

9. Claims **2 and 9-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kresina et al., Pub. No. US2003/0074324 A1 in view of Ogg, Pub. No. US2005/0075990 A1.

As per **Claim 2 and 9**, Kresina et al. discloses a system comprising a request for allocation of the PSD's to the indicia pool to service the indicia request (Para. 28; Para. 32; Para. 33). Kresina et al. fails to disclose a system comprising an indicia manager that initiates queues for generating indicia. However, Ogg teaches sending post data (postage

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indicia, bar code data and image representing the postage amount) to a queue (Para. 31, lines 9-12). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the system of Kresina et al. and include a queue with postage data as taught by Ogg because it greatly improves the efficiency of system's printer by allowing the printer to operate continuously.

As per **Claim 10**, Kresina et al. further discloses a system comprising a worker pool for initializing and holding PSD's for allocation (Para. 25).

As per **Claim 11**, Kresina et al. further discloses a system wherein the worker pool operates to set a port number for a particular PSD (Para. 24; Para. 144). Kresina et al. fails to disclose a system wherein a personal identification number for a particular PSD is set. However, Kresina et al. teaches a record containing a serial number for a PSD (Para. 144). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the system of Kresina et al. and include setting a personal identification number. Kresina et al. provides motivation to include a personal identification number in a PSD in order to keep a summary usage log (Para. 144).

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the

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specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadey S. Jabr whose telephone number is (571) 272-1516. The examiner can normally be reached on Mon. - Fri. 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Fadey S Jabr
Examiner
Art Unit 3639

FSJ

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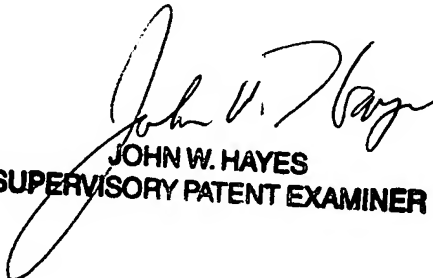
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**JOHN W. HAYES
SUPERVISORY PATENT EXAMINER**